that precisely the reverse was or might be the case. But we must remember that the mere possibility of a non-charitable purpose was held to avoid the Sutro trust. We may technically distinguish Estate of Sutro in which property was given to named trustees for charitable and other purposes from the instant case in which it is given to a corporation incorporated for both charitable and non-charitable purposes, but that would compel us to construe the word "charitable" in the third line of Civil Code section 1313 as meaning "mainly charitable" and in the fourth line as meaning "exclusively charitable." There is nothing in the statute to indicate such a differentiation of meaning. Estate of Dol must be taken as putting in doubt a rule which apparently had been in force in California as well as in England and in most American jurisdictions.[13]

We have the curious result that if the court had decided that the society was not charitable, the bequest would be void under Civil Code section 1275, since the society could not come under the exempted classes of corporations.

M. R.

COMMUNITY PROPERTY: EFFECT OF LEGISLATION UPON THE NATURE OF THE WIFE'S INTEREST THEREIN—The Federal Act of September 8, 1916, imposes a tax upon the transfer of the net estate of certain decedents. In *Blum v. Wardell*,[1] in the United States District Court for California, it was sought to evade the imposition of this tax upon the interest of a wife in community property which passed to her, under California law,[2] upon the death of her husband, intestate. The court reached the conclusion, novel to Californians, that the wife's interest was not subject to the tax on the theory that it was a vested interest during the life of the husband, and therefore did not pass to her as heir. This theory of the nature of the wife's interest is in accord with that of the community property states other than California.[3] It has also been approved by the United States Supreme Court.[4] It has been applied in

[13] 11 C. J. 330.

[1] (Jan. 5, 1921) 270 Fed. 309.

[2] Cal. Civ. Code § 1402.

[3] The community property system is in vogue in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. In every state having the community property system, except California, it is held that husband and wife have an equal present interest in the community property, and that whatever power of disposition the husband possesses is given to him as an agent of the community. La Tourette v. La Tourette (1914) 15 Ariz. 200, 137 Pac. 426; Kohny v. Dunbar (1912) 21 Idaho 258, 121 Pac. 544; Succession of Marsal (1907) 118 La. 212, 42 So. 778; In re Williams (1916) 40 Nev. 241, 161 Pac. 741; Beals v. Ares (1919) 185 Pac. 780 (New Mex.); Wright v. Hays (1853) 10 Tex. 133, 60 Am. Dec. 200; Brotton v. Langert (1890) 1 Wash. 73, 23 Pac. 688. See McKay, Community Property, p. 542; Ballinger, Community Property, p. 67 et. seq.

[4] Warburton v. White (1899) 176 U. S. 484, 44 L. Ed. 555, 20 Sup. Ct. Rep. 404; Arnett v. Reade (1911) 220 U. S. 311, 55 L. Ed. 477, 31 Sup. Ct. Rep. 425. The Supreme Court of the United States will follow the doctrine of the State Court as to whether the wife has a present vested interest or not. Warburton v. White, supra.

cases which hold that the wife's interest is not subject to a state inheritance tax.[5] But the California courts, in a long line of cases, have consistently repudiated this doctrine and have held that the wife's interest during the life of the husband is but a "mere expectancy" similar to that of an heir.[6] It is beyond the limits of this note to review the attacks upon the California doctrine, based principally upon the contention that the first of these cases[7] misinterpreted the Spanish law of the community which was intended to be enacted in California in 1850.[8] In view of the fact that this rule has become so imbedded in California that it may well be said to be "a rule of property," [9] such an inquiry would be merely academic. It should be noted, however, in passing, that there are expressions in other California decisions which are somewhat at variance with the "mere expectancy" theory and which lean apparently toward the view that the wife takes from her husband by right of survivorship.[10] All these cases were reviewed in recent decisions and the survivorship theory definitely rejected.[11] That the wife takes as heir was reaffirmed in cases holding that her interest in the community was subject to the state inheritance tax.[12]

The court in the principal case relies partly upon what it terms the "conflicting decisions" referred to above,[13] but bases its conclusion mainly upon the idea that the legislature has changed the wife's interest from an expectancy to a vested ownership by the various amendments to section 172 of the Civil Code[14] and by the statute declaring that the state inheritance tax shall not be imposed upon community property passing to the wife.[15] The question is

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[5] Kohny v. Dunbar, supra, n. 3; In re Williams, supra, n. 3; Succession of Marsal, supra, n. 3.

[6] Van Maren v. Johnson (1860) 15 Cal. 308; Packard v. Arrellanes (1861) 17 Cal. 525; Fallbrook Irrigation District v. Abila (1895) 106 Cal. 355, 362, 39 Pac. 794; In re Burdick (1896) 112 Cal. 387, 44 Pac. 734; Spreckels v. Spreckels (1897) 116 Cal. 339, 48 Pac. 228, 58 Am. St. Rep. 170, 36 L. R. A. 497; Sharp v. Loupe (1898) 120 Cal. 89, 52 Pac. 134; Spreckels v. Spreckels (1916) 172 Cal. 775, 158 Pac. 537.

[7] Van Maren v. Johnson, supra, n. 6. See criticism of this case in dissenting opinion of Justice Abbott in Reade v. De Lea (1908) 14 N. M. 442, 95 Pac. 139, and in Arnett v. Reade, supra, n. 4.

[8] 1 California Law Review, 32; 3 California Law Review, 359.

[9] Spreckels v. Spreckels (1916) 172 Cal. 775, 782, 158 Pac. 537.

[10] Beard v. Knox (1855) 5 Cal. 252, 63 Am. Dec. 125; Smith v. Smith (1859) 12 Cal. 217, 73 Am. Dec. 533; Galland v. Galland (1869) 38 Cal. 265; De Godey v. Godey, 39 Cal. 157.

[11] In re Burdick, supra n. 6; Spreckels v. Spreckels (1897) 116 Cal. 339, 48 Pac. 228.

[12] Estate of Moffitt (1908) 153 Cal. 359, 95 Pac. 653, 20 L. R. A. (N. S.) 207; Estate of Sims (1908) 153 Cal. 365, 95 Pac. 655; Estate of Rossi (1915) 169 Cal. 148, 146 Pac. 430.

[13] Supra, n. 10.

[14] Cal. Civ. Code § 172, amended by Cal. Stats. 1891, p. 425, adding the first proviso; amended by Cal. Stats. 1901 p. 598, adding the second proviso; amended by Cal. Stats. 1917, Ch. 583; Cal. Civ. Code § 172a, added by Cal. Stats. 1917, Ch. 583.

[15] Cal. Stats. 1917, Ch. 589; "Provided that for the purpose of this act

thus squarely presented: Is it reasonable to hold that the legislature intended by these amendments to make such a revolutionary change in the nature of the wife's interest without an express declaration to that effect?

It is indeed a strained construction of the words of the 1917 amendment to the state inheritance tax law which reads into it evidence of an intention to overturn the established law of the heirship of the wife. The legislative provision therein as regards the wife's interest in community property was limited expressly to "the purposes of this act." It merely provides that the wife shall be exempt from taxation as far as the community property is concerned. And it seems axiomatic almost that the general property law of the state would not be changed by a provision in an inheritance tax act.

As to the effect of the amendments to the code, a careful consideration of their provisions will show that they will not bear the construction put upon them in the principal case. Section 172a of the Civil Code of California[16] provides that the "wife must join in executing any instrument by which such community real property . . . is sold, conveyed or encumbered." But the section qualifies the requirement for joining the wife by providing that "the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation shall be presumed to be valid; but no action to avoid such instrument shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate." Previous to this amendment the courts had considered the effect of the requirements of the amendment of 1891[17] that the wife must give written consent in order to validate a gift or conveyance without consideration of community property. Their conclusion had been that a conveyance without the consent of the wife was not a nullity but was good against the husband, and that the utmost the wife could do would be to avoid the transfer so far as it affects her prospective one-half interest.[18] Even as to the wife's share the deed is only voidable.[19] It is altogether likely, in fact it may be presumed,[20] that the legislature took into consideration these interpretations of existing code

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the one-half of the community property which goes to the surviving wife on the death of the husband, under the provisions of section 1402, of the Civil Code, shall not be deemed to pass to her as heir to her husband, but shall for the purpose of this act, be deemed to go, pass or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act."

[16] Supra, n. 14.

[17] Supra, n. 14.

[18] Spreckels v. Spreckels (1916) 172 Cal. 775, 158 Pac. 537; Dargie v. Patterson (1917) 176 Cal. 714, 169 Pac. 360.

[19] Supra, n. 18.

[20] Estate of Moffitt, supra, n. 12.

provisions in shaping the 1917 amendments, and that the requirement of joining the wife, as modified by the proviso that the deed could be avoided only within one year, was intended to make the husband's sole deed voidable and not void.[21] Unless there is an entire abandonment of the ground taken in former decisions, it is difficult to see how the California courts[22] can accept the holding of Blum v. Wardell as to the nature of the wife's interest.[23]

L. E. K.

CONTRACTS: PAYMENT OF INCREASED PRICE FOR MANUFACTURED ARTICLES — LACK OF CONSIDERATION — In *Western Lithograph Company v. Vanomar Producers*[1] the plaintiff company sought to recover on a subsequent promise of the defendant to pay an increased price for goods already contracted for. Justice Olney denied recovery and in so doing undoubtedly followed the weight of authority both in our own state[2] and throughout the country.[3] In this case, however, there was no question of coercion and both plaintiff and defendant acted voluntarily upon motives of fair dealing, making the new agreement to meet increased cost of production, and the question arises as to the policy of the law, in a case of this character, in refusing to recognise and carry out the expressed intention of the parties to a contract. In other words, admitting that the original contract could have been extinguished by mutual act of the parties and a new one substituted,[4] or that by altering the terms of the defendant's performance, however

[21] In every community property state the husband alone can dispose of the community personal property. In Texas and Nevada the husband alone can even dispose of the community real property.

[22] Certain decisions of the state Supreme Court subsequent to the principal case clearly indicate that there has been no change in the theory of the wife's interest in community property. In Badover v. Guaranty Trust & Savings Bank (Aug. 29, 1921) 62 Cal. Dec. 273, the court definitely states that the wife has no existing property right in the community property, and any change in this settled rule of property could be made only by express legislation thereon.

[23] Under Treasury Decisions No. 3071, dated Sept. 18, 1920, and No. 3138, dated March 3, 1921, it is held that in all the community property states, except California, the husband and wife may render separate income tax returns and each report as gross income one-half of the income which under the law of the state constitutes community property. It is also held that in each of these states there shall be included, in computing the federal estate tax of a deceased spouse, one-half only of the community property of husband and wife domiciled therein. These rulings apply also to income and estate tax acts prior to the Revenue Act of 1918.

[1] (March 28, 1921) 61 Cal. Dec. 425, 197 Pac. 103.

[2] Cal. Civ. Code § 1605; Benedict v. Green Robbins Co. (1915) 26 Cal. App. 468, 147 Pac. 486; Pacific Railways Advertising Co. v. Carr (1916) 29 Cal. App. 722, 157 Pac. 529, L. R. A. 1917 C843n; Sullivan v. Sullivan (1893) 99 Cal. 187, 33 Pac. 862; Main Street and Agricultural Park Railroad Co. v. Los Angeles Traction Co. (1900) 129 Cal. 301, 61 Pac. 937.

[3] 1 Williston on Contracts § 130; Alaska Packers' Association v. Domenico (1902) 117 Fed. 99, 54 C. C. A. 445; 34 L. R. A. 33-44, note; Shriner v. Craft (1910) 166 Ala. 146, 51 So. 884, 139 Am. St. Rep. 19, 28 L. R. A. (N. S.) 450.

[4] Cal. Civ. Code § 1689; 3 Williston on Contracts § 1826.